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## A BILL FOR AN ACT

RELATING TO CHILD VISITATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that many grandparents  
2 today are stepping in to raise their grandchildren when the  
3 children's own parents, many of whom are minors themselves, are  
4 not able or willing to do so. The high cost of living in Hawaii  
5 often necessitates that one or both parents work full-time or  
6 part-time jobs, some while also attending school, college, or  
7 vocational education, to provide for their family and thus  
8 require grandparents to raise their grandchildren while the  
9 parents are at work or in school or both. The financial impact  
10 of raising a family in Hawaii is further compounded for single-  
11 parent households who often have to work two jobs to support  
12 their family. In addition, grandparents sometimes take on the  
13 responsibility to raise their grandchildren when the child's own  
14 parents abandon them or when the children can no longer live  
15 with them because of the parent's mental disorder, substance  
16 abuse, or incarceration. Grandparents may have the added burden  
17 of caring for children who suffered from abuse or neglect from



1 their own parents. These children may feel insecure and afraid,  
2 and may be angry at their situation and even embarrassed by it.

3 Raising a second generation brings many rewards for  
4 grandparents, including the fulfillment of giving grandchildren  
5 a sense of security, developing a deeper relationship, and  
6 keeping the family together. The bond between a grandparent and  
7 grandchild may run deeper than the relationship between parent  
8 and child. Hawaiian and non-Hawaiian grandparents can be great  
9 role models and influences, and they can provide a sense of  
10 cultural heritage and family history. Hawaiian and Non-Hawaiian  
11 grandparents can also educate their grandchildren about Hawaii  
12 and Hawaiian culture and traditions. Grandparents can further  
13 provide their grandchildren with love, have their best interests  
14 at heart, and can make them feel safe. Grandparents also  
15 encourage a child's healthy development. Overnight trips to  
16 Grandma's house, for example, may be less traumatic than  
17 sleepovers with peers and can help children develop  
18 independence. Grandparents may have lots of time to spend  
19 playing and reading to their grandchildren. Such dedicated  
20 attention only improves a child's developmental and learning  
21 skills.



1           The purpose of this Act is to provide guidelines for the  
2 court to consider in awarding visitation rights to grandparents.

3           SECTION 2. Section 571-46, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5           "(a) In actions for divorce, separation, annulment,  
6 separate maintenance, or any other proceeding where there is at  
7 issue a dispute as to the custody of a minor child, the court,  
8 during the pendency of the action, at the final hearing, or any  
9 time during the minority of the child, may make an order for the  
10 custody of the minor child as may seem necessary or proper. In  
11 awarding the custody, the court shall be guided by the following  
12 standards, considerations, and procedures:

13           (1) Custody should be awarded to either parent or to both  
14 parents according to the best interests of the child,  
15 and the court also may consider frequent, continuing,  
16 and meaningful contact of each parent with the child  
17 unless the court finds that a parent is unable to act  
18 in the best interest of the child;

19           (2) Custody may be awarded to persons other than the  
20 father or mother whenever the award serves the best  
21 interest of the child. Any person who has had de



1 factio custody of the child in a stable and wholesome  
2 home and is a fit and proper person shall be entitled  
3 prima facie to an award of custody;

4 (3) If a child is of sufficient age and capacity to  
5 reason, so as to form an intelligent preference, the  
6 child's wishes as to custody shall be considered and  
7 be given due weight by the court;

8 (4) Whenever good cause appears therefor, the court may  
9 require an investigation and report concerning the  
10 care, welfare, and custody of any minor child of the  
11 parties. When so directed by the court, investigators  
12 or professional personnel attached to or assisting the  
13 court, hereinafter referred to as child custody  
14 evaluators, shall make investigations and reports that  
15 shall be made available to all interested parties and  
16 counsel before hearing, and the reports may be  
17 received in evidence if no objection is made and, if  
18 objection is made, may be received in evidence;  
19 provided the person or persons responsible for the  
20 report are available for cross-examination as to any  
21 matter that has been investigated; and provided



1 further that the court shall define, in accordance  
2 with section 571-46.4, the requirements to be a court-  
3 appointed child custody evaluator, the standards of  
4 practice, ethics, policies, and procedures required of  
5 court-appointed child custody evaluators in the  
6 performance of their duties for all courts, and the  
7 powers of the courts over child custody evaluators to  
8 effectuate the best interests of a child in a  
9 contested custody dispute pursuant to this section.  
10 Where there is no child custody evaluator available  
11 that meets the requirements and standards, or any  
12 child custody evaluator to serve indigent parties, the  
13 court may appoint a person otherwise willing and  
14 available in accordance with section 571-46.4;

- 15 (5) The court may hear the testimony of any person or  
16 expert, produced by any party or upon the court's own  
17 motion, whose skill, insight, knowledge, or experience  
18 is such that the person's or expert's testimony is  
19 relevant to a just and reasonable determination of  
20 what is for the best physical, mental, moral, and



1 spiritual well-being of the child whose custody is at  
2 issue;

3 (6) Any custody award shall be subject to modification or  
4 change whenever the best interests of the child  
5 require or justify the modification or change and,  
6 wherever practicable, the same person who made the  
7 original order shall hear the motion or petition for  
8 modification of the prior award;

9 (7) Reasonable visitation rights shall be awarded to  
10 parents, [~~grandparents,~~] siblings, and any person  
11 interested in the welfare of the child in the  
12 discretion of the court, unless it is shown that  
13 rights of visitation are detrimental to the best  
14 interests of the child;

15 (8) The court may appoint a guardian ad litem to represent  
16 the interests of the child and may assess the  
17 reasonable fees and expenses of the guardian ad litem  
18 as costs of the action, payable in whole or in part by  
19 either or both parties as the circumstances may  
20 justify;



- 1           (9) In every proceeding where there is at issue a dispute  
2           as to the custody of a child, a determination by the  
3           court that family violence has been committed by a  
4           parent raises a rebuttable presumption that it is  
5           detrimental to the child and not in the best interest  
6           of the child to be placed in sole custody, joint legal  
7           custody, or joint physical custody with the  
8           perpetrator of family violence. In addition to other  
9           factors that a court shall consider in a proceeding in  
10          which the custody of a child or visitation by a parent  
11          is at issue, and in which the court has made a finding  
12          of family violence by a parent:
- 13           (A) The court shall consider as the primary factor  
14           the safety and well-being of the child and of the  
15           parent who is the victim of family violence;
- 16           (B) The court shall consider the perpetrator's  
17           history of causing physical harm, bodily injury,  
18           or assault or causing reasonable fear of physical  
19           harm, bodily injury, or assault to another  
20           person; and



- 1 (C) If a parent is absent or relocates because of an
- 2 act of family violence by the other parent, the
- 3 absence or relocation shall not be a factor that
- 4 weighs against the parent in determining custody
- 5 or visitation;
  
- 6 (10) A court may award visitation to a parent who has
- 7 committed family violence only if the court finds that
- 8 adequate provision can be made for the physical safety
- 9 and psychological well-being of the child and for the
- 10 safety of the parent who is a victim of family
- 11 violence;
  
- 12 (11) In a visitation order, a court may:

  - 13 (A) Order an exchange of a child to occur in a
  - 14 protected setting;
  - 15 (B) Order visitation supervised by another person or
  - 16 agency;
  - 17 (C) Order the perpetrator of family violence to
  - 18 attend and complete, to the satisfaction of the
  - 19 court, a program of intervention for perpetrators
  - 20 or other designated counseling as a condition of
  - 21 the visitation;





- 1           (D) Order the perpetrator of family violence to
- 2                   abstain from possession or consumption of alcohol
- 3                   or controlled substances during the visitation
- 4                   and for twenty-four hours preceding the
- 5                   visitation;
- 6           (E) Order the perpetrator of family violence to pay a
- 7                   fee to defray the costs of supervised visitation;
- 8           (F) Prohibit overnight visitation;
- 9           (G) Require a bond from the perpetrator of family
- 10                   violence for the return and safety of the child.
- 11                   In determining the amount of the bond, the court
- 12                   shall consider the financial circumstances of the
- 13                   perpetrator of family violence;
- 14           (H) Impose any other condition that is deemed
- 15                   necessary to provide for the safety of the child,
- 16                   the victim of family violence, or other family or
- 17                   household member; and
- 18           (I) Order the address of the child and the victim to
- 19                   be kept confidential;
- 20       (12) The court may refer but shall not order an adult who
- 21                   is a victim of family violence to attend, either



1 individually or with the perpetrator of the family  
2 violence, counseling relating to the victim's status  
3 or behavior as a victim as a condition of receiving  
4 custody of a child or as a condition of visitation;

5 (13) If a court allows a family or household member to  
6 supervise visitation, the court shall establish  
7 conditions to be followed during visitation;

8 (14) A supervised visitation center shall provide a secure  
9 setting and specialized procedures for supervised  
10 visitation and the transfer of children for visitation  
11 and supervision by a person trained in security and  
12 the avoidance of family violence;

13 (15) The court may include in visitation awarded pursuant  
14 to this section visitation by electronic communication  
15 provided that the court shall additionally consider  
16 the potential for abuse or misuse of the electronic  
17 communication, including the equipment used for the  
18 communication, by the person seeking visitation or by  
19 persons who may be present during the visitation or  
20 have access to the communication or equipment; whether  
21 the person seeking visitation has previously violated



1 a temporary restraining order or protective order; and  
2 whether adequate provision can be made for the  
3 physical safety and psychological well-being of the  
4 child and for the safety of the custodial parent;

5 (16) The court may set conditions for visitation by  
6 electronic communication under paragraph (15),  
7 including visitation supervised by another person or  
8 occurring in a protected setting. Visitation by  
9 electronic communication shall not be used to:

10 (A) Replace or substitute an award of custody or  
11 physical visitation except where:

12 (i) Circumstances exist that make a parent  
13 seeking visitation unable to participate in  
14 physical visitation, including military  
15 deployment; or

16 (ii) Physical visitation may subject the child to  
17 physical or extreme psychological harm; or

18 (B) Justify or support the relocation of a custodial  
19 parent; and

20 (17) Notwithstanding any provision to the contrary, no  
21 natural parent shall be granted custody of or



1           visitation with a child if the natural parent has been  
2           convicted in a court of competent jurisdiction in any  
3           state of rape or sexual assault and the child was  
4           conceived as a result of that offense; provided that:

5           (A) A denial of custody or visitation under this  
6           paragraph shall not affect the obligation of the  
7           convicted natural parent to support the child;

8           (B) The court may order the convicted natural parent  
9           to pay child support;

10          (C) This paragraph shall not apply if subsequent to  
11          the date of conviction, the convicted natural  
12          parent and custodial natural parent cohabitate  
13          and establish a mutual custodial environment for  
14          the child; and

15          (D) A custodial natural parent may petition the court  
16          to grant the convicted natural parent custody and  
17          visitation denied pursuant to this paragraph, and  
18          upon such petition the court may grant custody  
19          and visitation to the convicted natural parent  
20          where it is in the best interest of the child."



1 SECTION 3. Section 571-46.3, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§571-46.3 Grandparents' visitation rights; petition;  
4 notice; order. (a) A grandparent or the grandparents of a  
5 minor child may file a petition with the court for an order of  
6 reasonable visitation rights. The court may award reasonable  
7 visitation rights provided that the following [~~criteria are~~  
8 ~~met:~~] findings are made:

9 (1) This State is the home state of the child at the time  
10 of the commencement of the proceeding; [and

11 ~~(2) Reasonable visitation rights are in the best interests~~  
12 ~~of the child.]~~

13 (2) Grandparent visitation is in the best interest of the  
14 child; and

15 (3) Denial of reasonable grandparent visitation rights  
16 would cause actual or potential harm to the child.

17 (b) No hearing for an order of reasonable visitation  
18 rights under this section shall be had unless each of the living  
19 parents and the child's custodians shall have had due notice,  
20 actual or constructive, of the allegations of the petition and  
21 of the time and place of the hearing thereof.



# H.B. NO. 1216

1        (c) In any proceeding on a petition filed under this  
2 section, there shall be a rebuttable presumption that a parent's  
3 decision regarding visitation is in the best interest of the  
4 child. The presumption may be rebutted by a preponderance of  
5 the evidence that denial of reasonable grandparent visitation  
6 rights would cause actual or potential harm to the child.

7        (d) In awarding reasonable grandparent visitation, the  
8 court shall be guided by all standards, considerations, and  
9 procedures for parent visitation under section 571-46.

10       (e) An order made pursuant to this section shall be  
11 enforceable by the court, and the court may issue other orders  
12 to carry out these enforcement powers if in the best interests  
13 of the child."

14       SECTION 4. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16       SECTION 5. This Act shall take effect on July 1, 2015.

17

INTRODUCED BY: *J. M. S. [Signature]*

JAN 28 2015



# H.B. NO. 1216

**Report Title:**

Child Custody; Grandparent Visitation

**Description:**

Deletes duplicative provision of awarding grandparents reasonable visitation rights. Adds as prerequisites to awarding visitation that the court find that awarding custody to grandparent is in the best interest of the child and that denial of reasonable grandparent visitation rights would cause actual or potential harm to the child. Clarifies procedures for awarding visitation.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

